

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
NATIONAL SCIENCE AND TECHNOLOGY)
NETWORK, INC.)
Licensee of Station WPMP751, Corona and Monte)
Nido, California)

ORDER PROPOSING MODIFICATION

Adopted: February 13, 2007

Released: February 15, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a request from Mobile Relay Associates (MRA) seeking modification of the license of National Science and Technology Network, Inc. (NSTN) for Station WPMP751, Corona and Monte Nido, California.¹ Based upon our review and analysis of the information before us, we propose to modify NSTN's license for Station WPMP751 to delete the authorization for operations at Monte Nido.

2. *Background.* Frequency coordination in the Private Land Mobile Radio (PLMR) Services is the process by which a private entity certified by the Commission recommends the most appropriate frequencies for applicants in their designated radio service.² In 1986, the Commission adopted frequency coordination rules and procedures in an effort to maximize service to the public by assuring that the assignment and management of the PLMR spectrum is performed in an efficient and effective manner.³ The Commission has stated that accurate information is fundamental to its ability to review effectively the frequency recommendations made by frequency coordinators prior to licensing.⁴ A fundamental aspect of frequency coordination, in any radio service, is an accurate determination by the frequency coordinator of whether the proposed operations potentially will cause harmful interference to existing co-channel or adjacent channel licensees.⁵

3. In 1998, the American Automobile Association (AAA), a FCC-certified frequency coordinator, submitted an application⁶ on behalf of NSTN to operate an Industrial/Business Pool station

¹ See Request for to [sic] Initiate Modification Proceedings filed on October 27, 2004 by MRA (MRA Modification Request). NSTN filed a response, Letter dated November 4, 2004 from Ted S. Henry, President, NSTN to Tracy Simmons, FCC-Gettysburg (NSTN Response), and MRA filed a reply, Reply To Opposition of NSTN filed on November 16, 2004 by MRA.

² See Frequency Coordination in the Private Land Mobile Radio Services, *Report and Order*, PR Docket No. 83-737, 103 F.C.C. 2d 1093 (1986).

³ *Id.* at 1094-95 ¶ 2.

⁴ *Id.* at 1148 ¶ 111, 1150 ¶ 116.

⁵ See generally American Mobile Telecommunications Association, Inc. and American Trucking Associations, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12416, 12422-23 ¶¶ 13-15 (WTB PSPWD 2001).

⁶ FCC File No. 9808D112885

on frequency pair 471/474.2625 MHz at two locations, Corona and Monte Nido, California. Based upon AAA's coordination, NSTN received an authorization to operate Station WPMP751 on October 28, 1998.

4. On October 27, 2004, MRA, licensee of Station WPLQ457, Santa Paula, California, requested that NSTN's Station WPMP751 be modified to revoke the authorization for the Monte Nido site. MRA argues that the frequency coordination of the NSTN's application was in error.⁷ Specifically, MRA notes that Section 90.313 of the Commission's Rules provides that the maximum loading for a 450-512 MHz Industrial/Business Pool channel is ninety units, and a channel loaded to capacity cannot be reassigned within forty miles without the consent of the affected licensee(s).⁸ It also notes that its license to operate on frequency pair 471/474.2625 MHz at Santa Paula and La Crescenta, California under Call Sign PLQ457 was granted on November 24, 1997 and that it had fully loaded the channel with ninety mobile units from the Santa Paula site (which is less than forty miles from NSTN's Monte Nido site) prior to the filing of the NSTN's application.⁹ MRA asserts that the fully loaded channel and Station WPLQ457 should have precluded AAA from coordinating NSTN's Monte Nido site.¹⁰

5. *Discussion.* Based upon the record before us, we conclude that the NSTN application should not have been coordinated or granted. In this connection, we note that MRA fully loaded frequency pair 471.2625/474.2625 MHz at its licensed Santa Paula, California prior to the filing of NSTN's application. As a result of this loading, the channel was prohibited from being reassigned within forty miles. Our study reveals that NSTN's Monte Nido site is 27.91 miles from MRA's Santa Paula site. As a result, we conclude that AAA's coordination of NSTN's application for operations at Monte Nido, California on frequency pair 471.2625/474.2625 MHz was defective.

6. We believe that Section 316(a)(1) of the Communications Act of 1934, as amended, provides the appropriate vehicle for resolving this matter.¹¹ Section 316(a) permits the Commission to modify a station license if the action will promote the public interest, convenience, and necessity.¹² Because the coordination and eventual grant of NSTN's application were defective, we believe that a modification of the NSTN license to remove authorization for the Monte Nido site is appropriate. In accordance with Section 1.87(a) of the Commission's Rules,¹³ we will not issue a modification order until NSTN has received notice of our proposed action and has had an opportunity to interpose a protest. To protest the modification, NSTN must, within thirty days of the release date of this *Order Proposing Modification*, submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., Room TW-A325, Washington, D.C. 20554.¹⁴ If no protest is

⁷ See MRA Modification Request at 3.

⁸ See 47 C.F.R. § 90.313(a)(2), (b), (c).

⁹ See MRA Modification Request at 1-2.

¹⁰ See *id.* at 3. MRA indicates that NSTN's facilities also violated Section 90.187 of the Commission's Rules, 47 C.F.R. § 90.187. See MRA Modification Request at 3. We agree with NSTN, however, that Section 90.187 of the Commission's Rules is inapplicable because Station WPMP751. See NSTN Response at 1.

¹¹ See 47 U.S.C. § 316(a)(1).

¹² *Id.* We disagree with NSTN's suggestion that it is contrary to the public interest to modify a license "even years after grant." See NSTN Response at 1. Relevant authority clearly establishes that the Commission's authority to modify licenses under Section 316 is not limited in time or to the correction of post-licensing events. See, e.g., National Science and Technology Network, Inc., *Order on Reconsideration*, 21 FCC Rcd 9050, 9053 ¶ 14 (WTB PSCID 2006) (citing California Metro Mobile Communications, Inc. v. FCC, 365 F. 2d 38, 45 (D.C. Cir. 2004)).

¹³ See 47 C.F.R. § 1.87(a).

¹⁴ The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's

filed, NSTN will have waived its right to protest the modification and will be deemed to have consented to the modification.

7. *Conclusion.* For the reasons stated above, we conclude that the underlying frequency coordination and subsequent grant of NSTN's license for Station WPMP751 was defective. Accordingly, we propose to modify this license removing the authorization operations at Monte Nido, California on frequency pair 471.2625/474.2625 MHz.

8. ACCORDINGLY, IT IS PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, the license for Private Land Mobile Radio Service Station WPMP751 BE MODIFIED to delete locations 2, 5, and 6.

9. IT IS FURTHER ORDERED that, pursuant to Section 4(i) Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.87(i) of the Commission's Rules, 47 C.F.R. § 1.87(i), that this *Order Proposing Modification* SHALL BE SENT by certified mail, return receipt requested to National Science and Technology Network, Inc., 2050 S. Bundy Drive, Suite 285, Los Angeles, CA 90025, Attn: Ted S. Henry; and to Professional Licensing Consultants, Inc., P.O. Box 1714, Rockville, MD 20849, Attn: J. A. (Josie) Lynch.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

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Secretary are accepted only at our new location at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service, Express Mail, and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).